

**MAR 16 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**BARRY NORTHCROSS PATTERSON,**

**Plaintiff - Appellant,**

**v.**

**DORA B. SCHRIRO, Director, sued in  
individual and official capacity; et al.,**

**Defendants - Appellees.**

**No. 05-16168**

**D.C. No. CV-03-02177-PGR**

**MEMORANDUM\***

**Appeal from the United States District Court  
for the District of Arizona  
Paul G. Rosenblatt, District Judge, Presiding**

**Submitted March 8, 2006\*\***

**Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.**

**Barry Northcross Patterson, an Arizona state prisoner, appeals pro se from  
the district court's order denying his request for costs following the dismissal of**

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**\* This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.**

**\*\* The panel unanimously finds this case suitable for decision without  
oral argument. See Fed. R. App. P. 34(a)(2).**

his civil rights action as moot. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for abuse of discretion, *Ass’n of Mexican-American Educators v. State of California*, 231 F.3d 572, 592 (9th Cir. 2000), and we affirm.

The district court did not abuse its discretion by denying Patterson’s request for costs because Patterson was not a “prevailing party” within the meaning of Fed. R. Civ. P. 54(d). *See Miles v. California*, 320 F.3d 986, 988 (9th Cir. 2003) (costs under Rule 54(d) may not be awarded where an underlying claim is dismissed for lack of subject matter jurisdiction because the dismissed party is not a “prevailing party”).

The district court also did not abuse its discretion by declining to award Patterson costs pursuant to 28 U.S.C. § 1919. *See id.* at 988 n.2 (where the underlying claim is dismissed for want of jurisdiction, the award of costs is governed by 28 U.S.C. § 1919 which is permissive and allows the district court to award “just costs”).

To the extent Patterson challenges the district court’s order dismissing his action as moot, we do not consider his contentions because he did not file a notice of appeal within 30 days of the date of entry of judgment. *See Burt v. Hennessey*, 929 F.2d 457, 458 (9th Cir. 1991).

**AFFIRMED.**